

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

THOMAS M. BOLICK, II	:	CIVIL ACTION
	:	
v.	:	
	:	
COMMONWEALTH OF PENNSYLVANIA	:	NO. 05-5455

ORDER AND MEMORANDUM

ORDER

AND NOW, this 30th day of November, 2005, upon consideration of defendant's pro se Motion for the Recusal of Judge Jan DuBois (Document No. 4, filed November 21, 2005), for the reasons set forth in the attached Memorandum, **IT IS ORDERED** that petitioner's pro se Motion for the Recusal of Judge Jan DuBois is **DENIED**.

IT IS FURTHER ORDERED that copies of this Order shall be served on all counsel and on defendant, Thomas M. Bolick, at 1377 Second Street Pike, Richboro, PA 18954.

MEMORANDUM

I. BACKGROUND

On January 20, 1981, petitioner was convicted in the Court of Common Pleas of Northumberland County of bank robbery and was sentenced to a term of 2½ to 10 years of incarceration. In 1996, after completing his sentence, petitioner filed a petition under the Post Conviction Relief Act ("PCRA"). This PCRA petition was dismissed as untimely in 2001 because it was filed after he completed his sentence. The Superior Court affirmed the dismissal on January 29, 2002. The Pennsylvania Supreme Court denied allowance of appeal on August 22, 2002. On November 5, 2003, petitioner filed in the Court of Common Pleas of Northumberland County a Motion to Vacate Judgment Due to Judicial Fraud. The Court of Common Pleas denied this Motion on December 3,

2003. On December 12, 2003, that Court denied petitioner's Motion for Reconsideration. The Superior Court affirmed the Court of Common Pleas' denial of petitioner's Motion to Vacate Judgment and the Motion for Reconsideration.

Petitioner next filed a Notice of Removal on August 23, 2004 in this Court. On October 19, 2004, petitioner filed a Motion for Judicial Notice and Summary Judgment and on November 4, 2004, petitioner filed a Request for Entry of Default. On November 15, 2004, the Commonwealth of Pennsylvania (the "Commonwealth") filed a Motion to Dismiss Petitioner's Motion for Judicial Notice and Summary Judgment Due to Mootness, and on November 22, 2004, petitioner filed a document entitled "Response Pursuant to Rule 7.1 by Thomas M. Bolick, Jr., To the Commonwealth of Pennsylvania's Motion to Dismiss Petitioner's Motion for Judicial Notice and Summary Judgment Due to Mootness."

By Order dated March 15, 2005, this Court dismissed with prejudice petitioner's notice of removal. This Court concluded that removal of petitioner's state court criminal action to federal court was improper under 28 U.S.C. § 1441 and there was no other basis of federal jurisdiction. The Court of Appeals for the Third Circuit affirmed this Court's decision, stating that petitioner had "presented no viable argument on appeal to question the propriety of the District Court's judgment." Pennsylvania v. Bolick, 2005 U.S. App. Lexis 20177 (3d Cir. Sept. 20, 2005).

On October 19, 2005, petitioner filed in this Court a "Complaint and Demand for Jury Trial and Motion to Vacate and Set Aside Judgment and to Expunge the Record" (Document No. 1, filed October 19, 2005). This motion seeks to strike as void the judgment entered against petitioner on January 20, 1981 in the Court of Common Pleas of Northumberland County. On November 18, 2005, the defendant in the instant action, the Commonwealth of Pennsylvania, filed a motion to dismiss

(Document No. 3, filed November 18, 2005). These motions are currently pending.

On November 21, 2005, petitioner filed a “Motion for the Recusal of Judge Jan DuBois” (Document No. 4, filed November 21, 2005). The motion argues that because the undersigned district judge dismissed with prejudice petitioner’s notice of removal by Order dated March 15, 2005, he must be recused from the case under 28 U.S.C. § 455(a) due to actual and perceived partiality.¹ The recusal motion is the subject of the instant Order and Memorandum.

II. ANALYSIS

Under 28 U.S.C. § 455(a) (2005), “[a]ny justice, judge, or magistrate [judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” This catchall recusal provision requires an objective evaluation of the appearance of impropriety. See Liteky v. United States, 510 U.S. 540 (1994). The provision requires judicial recusal “if a reasonable person, knowing all the circumstances, would expect that the judge would have actual knowledge” of his interest or bias in a case. Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847 (1988).

In Liteky, the Supreme Court made clear that “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion” under 28 U.S.C. § 455(a). 510 U.S. at 555 (citing United States v. Grinnell Corp., 384 U.S. 563, 583 (1966)). Judicial rulings “in and of themselves can only in the rarest of circumstances evidence the degree of favoritism or antagonism required” to prove bias. Id. Moreover, the Supreme Court stated that “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not

¹The Motion for the Recusal of Judge Jan DuBois also alleges treason by the undersigned district court judge. This allegation is meritless, and need not be analyzed by the Court.

constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.” Id.

Under the recusal standards of 28 U.S.C. § 455(a), the Court concludes that petitioner’s motion for recusal is totally without merit. Petitioner has not met his burden of alleging sufficient facts to establish a genuine basis for an objectively reasonable person to believe that the undersigned district judge harbors any personal bias or prejudice against petitioner. Indeed, he has alleged absolutely no facts which would warrant recusal. The asserted basis for recusal – namely, the Order of this Court dated March 15, 2005 – is not a valid ground for a recusal motion. First, it does not evidence any antagonism or animosity toward petitioner. Second, it was affirmed on appeal. Although petitioner disagrees with the ruling of this Court, this difference in opinion does not constitute a sufficient factual or legal basis for recusal. The undersigned district judge cannot be disqualified under 28 U.S.C. § 455(a) merely because petitioner disagrees with his decision.

Because the Court concludes that no reasonable person, knowing all the circumstances of this case, would harbor doubts concerning the undersigned district judge’s impartiality, petitioner’s Motion for Recusal of Judge Jan DuBois is denied.

BY THE COURT:

/s/ Honorable Jan E. DuBois
JAN E. DUBOIS, J.